FILED

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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEO ROBERT SCHOFIELD, JR.,
Petitioner,

v.

MICHAEL W. MOORE,
as Secretary of the Florida
Department of Corrections,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LEO ROBERT SCHOFIELD, JR.*
DC# 115760 MB # 695
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*Pro Se**

49pp

QUESTION PRESENTED

Can an actually innocent state prisoner who was not represented by counsel[1] in a capital trial successfully petition for a federal writ of *habeas corpus* when apparently time-barred by 28 U.S.C. §2244(d) because of his federal attorney's negligence?

[1]Trial counsel was physically present but unable to supply legal representation. *Powell v. Alabama*, 53 S.Ct. 55 287 U.S. 45 77 LE 158 (1932)

PARTIES TO THE PROCEEDING

Petitioner

Leo Robert Schofield, Jr.

Respondent

The State of Florida is party to this proceeding, acting through Michael W. Moore, as Secretary of the Florida Department of Corrections, and Bob Butterworth as the Florida Attorney General.

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Petitioner, Leo Robert Schofield, Jr., respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reproduced in Appendix G. The opinion of the District Court dismissing Schofield's *Habeas* petition is reproduced in Appendix A. Schofield's post-judgment motions in the District Court were denied without comment. Appendix C.

STATEMENT OF JURISDICTION

Pursuant to the provisions of 28 U.S.C. § 1254 (1) this Honorable Court has jurisdiction to review a United States Circuit Court of Appeals' order denying an application for Certificate of Appealability by way of petition for writ of certiorari. See *Hohn v. United States*, 118 S.Ct. 1969 (1998). In the instant case, the United States Circuit Court of Appeals, Eleventh Circuit, issued an order dated January 28, 2000, denying petitioners application for a certificate of appealability. According to the laws and treaties of the United States, this Court has jurisdiction to review that order.

STATEMENT OF THE CASE

The fundamental issue in this case is whether an actually innocent state prisoner who was not represented by counsel in a capital trial can successfully petition for a federal writ of *habeas corpus* when the petition is apparently time-barred because of the prisoner's federal attorney's negligence. Also, no objection was made at any time by the State of

the issuance of the writ. This was the first time the prisoner sought any assistance from the federal courts. And, it is clear that the prisoner will be found to be not guilty at a new trial because of legal representation and also because of the use of alibi witnesses and other exculpatory evidence to establish that it was impossible for the prisoner to commit the crime.

A. State Background

The night that Schofield's wife disappeared was the worst night of his life. He was in love with Michelle. They were both young and thought that their life together would go on for many years, well past their horizon of time. There had been some of the usual marital conflicts, but no serious problems. He couldn't understand her absence from their home and asked the police to help him search for her.

For the first few days, all Schofield knew was that his wife was missing. He was frantic to find her and searched every conceivable place she might be near their Polk County, Florida home. She was found dead, brutally stabbed to death. The police were led to the body by Schofield's father.

Schofield cooperated with the police and State Attorney's office until they asked him to testify against his father. From that time on, Schofield distanced himself from the investigation.

The intensity of the investigation thereafter faded with no real effort to identify fingerprints found on Michelle's car window nor to determine who the killer was by use of the skin found under Michelle's fingernails. It was a frustrating situation for Schofield who wanted the killer captured, whoever he or she might be, but he did not want to point an emphatic finger at anyone close to him. Schofield was

certain that the hard evidence such as the fingerprints (which are still unidentified) and skin scrapings,(mysteriously misplaced), would surely disclose the true identity of Michelle's murderer. Schofield was wrong.

Schofield was arrested and confined in the Polk County Jail. He was charged with premeditated murder, a capital offense. A public defender was appointed for him.

At first, Schofield was confident that his obvious innocence was all that he needed for a prompt acquittal. After all, several people were able to supply testimony that Schofield was with them in other places, doing other things, when his wife was murdered. But time and jailhouse talk eroded this confidence.

Schofield replaced his public defender with a private attorney, Jack Edmund. It was tough to scrape up the retainer but Schofield was increasingly concerned that he would be railroaded for a crime that he had not committed. His fellow residents at the Polk County Jail recommended Edmund. Schofield had been raised "up north" and had no idea who the competent defense attorneys were in Polk County.

Attorney Edmund came by the jail to see Schofield at 8:00 p.m. the night before the capital trial was to start; he stayed only a short while. <u>This was his first visit</u>. He told Schofield that he had turned down a deal from the State in which Schofield would plead to second degree murder. At the time, that was fine with Schofield. He knew that he had not murdered his wife and with the help of attorney Edmund, he would soon be found not guilty and allowed to walk out of the jail. Then his attorney asked Schofield to tell him about the case: the attorney knew virtually nothing about the facts.

When trial started the next morning, the judge asked

Mr. Edmund if he was ready to begin. The defense attorney then lied to the judge, replying that he was ready to try the case, when in truth, he was not. The trial lasted several days and consisted mainly of circumstantial evidence, which could have been explained, and a number of character witnesses adverse to Schofield. There were no eye witnesses nor any hard evidence linking Schofield to the crime. Predictably, Schofield was convicted even though he took the stand and denied killing his wife. None of the alibi witnesses were called even though they had come voluntarily to the courtroom. There were many such omissions and grievous mistakes, all because attorney Edmund was totally unprepared to try the case. Schofield became a joke, someone to be derided and finally convicted. Legally, the defense attorney's chair was not occupied during Schofield's trial; he would have been better off if the chair had been physically empty as well.

Schofield exhausted his state remedies, both with direct appeals to the District Court of Appeals and to the Florida Supreme Court. Post-judgment relief was also sought; its denial resulted in unsuccessful appeals.

B, Federal Proceedings.

On March 30, 1998, petitioner Leo Robert Schofield, Jr., (Schofield), filed a 28 U.S.C. §2254 petition for writ of *habeas corpus* in the United States District Court, Middle District of Florida challenging his state court conviction for first degree murder. The District Court entered an order on January 15, 1999 dismissing Schofield's petition finding it to be untimely under the provisions of 28 U.S.C. § 2244(d). (Appendix A).

In June, 1999, while post-judgment motions were pending before the Court, Schofield submitted a sworn

statement and other tangible evidence alleging that if his petition was in fact untimely, it is the result of attorney Harrison's negligence[1] (Appendix B).

Notwithstanding the sworn allegation and evidence demonstrating that attorney negligence was responsible for Schofield's petition being untimely filed, the District Court failed to conduct any proceedings to determine the validity of Schofield's allegation, and whether Schofield should be entitled to submit a belated petition for consideration. Rather, the District Court simply denied Schofield's post-judgment motions without comment. (Appendix C).

Following the denial of his post-judgment motions Schofield timely requested a Certificate of Appealability be issued by the District Court on the basis that by failing to conduct a hearing and determine the validity of the allegations that attorney negligence was responsible for the untimely filing of his petitions, (and subsequently this loss of all federal *Habeas Corpus* review of his criminal conviction), constituted a deprivation of his right to Due Process of Law as contemplated under the Fifth Amendment to the United States Constitution. (Appendix D).

Nonetheless, on October 27, 1999, without commenting on the merits of Schofield's allegations, the District Court denied his request for Certificate of Appealability in a boilerplate order stating that Schofield failed to make a "substantial showing" of a denial of a constitutional right. (Appendix E).

---

[1] In Schofield's motion, he alleged that attorney Harrison was hired to research, prepare and timely file his petition, and that attorney Harrison was working on the petition between August 1997 and March 16, 1998, which according to the calculations computed by the District Court, indicate that had attorney Harrison discharged his duties in a responsible manner, Schofield's petition would have been timely.

Schofield timely filed an application for Certificate of Appealability in the Eleventh Circuit Court of Appeals on the same basis. (Appendix F). However, on January 28, 2000, the Eleventh Circuit Court of Appeals simply denied Schofield's application. (Appendix G).

Schofield now turns to this Court to correct this fundamental miscarriage of justice.

REASON FOR GRANTING THE WRIT

I

THE PETITION SHOULD BE GRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS THAT A CLAIM OF ACTUAL INNOCENCE, COUPLED WITH A SHOWING THAT EVIDENCE NOT USED AT THE FIRST TRIAL WILL MORE THAN LIKELY RESULT IN ACQUITTAL AT THE NEW TRIAL, WILL SURMOUNT PROCEDURAL *HABEAS* BARRIERS.

Schofield's request for a certificate of appealability from the U.S. Court of Appeals was summarily denied by a single judge who ruled that Schofield had not made a substantial showing of Constitutional abuse and so could not have the denial of his federal *habeas* petition reviewed. Such a ruling is contrary to the decisions of this Court in cases such as *Schlup v. Delo*, 130 L.Ed. 2d 808 (1995), where a Missouri prisoner was convicted of the murder of a fellow inmate.

After Schlup exhausted his state remedies, he filed a *pro se* federal *habeas* petition which the District Court denied, finding that Schlup's ineffectiveness claim was procedurally barred. No evidentiary hearing was held. The Court of Appeals affirmed, denying all relief including a rehearing.

The Supreme Court denied a petition for certiorari.

Schlup then filed a second federal *habeas* petition, repeating the ineffectiveness claim and also asserting his actual innocence. The State responded, arguing that procedural bars precluded any relief for Schlup. The District Court concluded that Schlup had failed to show that its refusal to entertain those claims would result in a fundamental miscarriage of justice. The case eventually proceeded to the Supreme Court for review.

This Court granted Schlup relief because both the District Court and the Court of Appeals had evaluated the record under an improper standard. The Court stated its concern that there is always a fundamental miscarriage of justice when an innocent person has been convicted as a result of constitutional error and so procedural bars should not stand in the way of consideration of the merits of a federal *habeas* petition.

Schofield makes a stronger showing that he has passed the threshold test: that is more likely than not that he will be acquitted at his new trial. There was no direct testimony or evidence tying Schofield to the murder of his wife, only some explainable circumstances and numerous adverse character witnesses. Also, Schofield testified in his own behalf and under the *Powell* test was not represented by counsel. When represented by an attorney, who diligently prepares for trial, and who employs the alibi witnesses and other exculpatory evidence, then it is a virtual certainty that Schofield will be acquitted.

On the other hand, there were eye witnesses who testified against Schlup, pointing at him as one of the murderers. And, Schlup had legal representation under the *Powell* test, even if it was deficient.

Thus, since Schofield has shown that there has been a fundamental miscarriage of justice as a result of constitutional error in his case, his federal claim for *habeas* relief is not barred by a statute of limitations and Schofield, even more than Schlup, should have the assistance of this Court in providing an expeditious remedy to secure his rights under the Fifth, Sixth, and Fourteenth Amendments to the Constitution.

II.

THE PETITION SHOULD BE GRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS THAT A FIRST FEDERAL *HABEAS* PETITION SHOULD BE REVIEWED WHEN NOT FACIALLY DEFICIENT AND WHEN NO CLAIM OF PREJUDICE HAS BEEN RAISED.

Larry Lonchar waited several years to file his first federal *habeas* petition. The state opposed his petition, claiming inequitable conduct in waiting almost six years, and until the last minute, to file his petition. The District Court granted a stay which the Court of Appeals vacated. The Supreme Court then reviewed the case. *Lonchar v. Thomas*, 134 L.Ed. 2d 440 (1996).

This Court determined that while Lonchar's petition was clearly one that had been delayed, the District Court had not been asked to, nor did it make a finding of prejudice to the State. Nor did the Lonchar petition show facially that the petitioner was not entitled to relief.

It was important to this Court that Lonchar receive a

a review of his *habeas* claims because this was his first petition, saying at page 455

> ...[T]he interest in permitting federal habeas review of a first petition is quite strong. And, given the importance of a first federal habeas petition, it is particularly important that any rule that would deprive inmates of all access to the writ should be both clear and fair.

In the present case, the District Judge decided that Schofield had waited too long to file his first federal *habeas* petition, violating a statute of limitations. The Court of Appeals agreed. This rule is shown by the circumstances in the Schofield case to be neither clear nor fair.

Thus, the petition should be granted because the decision, below, conflicts with this Court's prior ruling that a first federal *habeas* petition should be reviewed when not facially deficient and where no claim of prejudice has been raised: Schofield's petition was facially sound and there was no objection of any sort from the State.

III.

THE PETITION SHOULD BE GRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THE RULINGS FROM THE U.S. COURT OF APPEALS, NINTH CIRCUIT, THAT A FEDERAL *HABEAS* PETITION IS EQUITABLY TOLLED WHEN THE PRISONER IS NOT RESPONSIBLE FOR THE DELAY.

In California, Rodney Beeler filed a *pro se* request for appointment of counsel and a stay of execution after his unsuccessful petition for writ of certiorari to the Supreme

Court following his appeals in State court. An attorney was appointed and started work on the federal *habeas* petition. Before it was filed, the attorney moved to another state and a second attorney took over but requested permission to delay the filing of Beeler's petition until after the statute of limitations had run. The District Court approved the delay. Calderon, the San Quentin warden, then sought review of the District Court's decision. *Calderon v. U.S. District Court*, 128 F.3d 1283 (9th Cir. 1997).

The Court of Appeals determined that the statute of limitations specified in 28 U.S.C.§ 2244 was subject to equitable tolling where extraordinary circumstances beyond a prisoner's control make it impossible to file the petition on time. *Id.* at 1288. Since Beeler had no control over his attorneys, these were extraordinary circumstances which justified tolling the statute of limitations.

Here, Schofield likewise had no control over his attorney and his delay in preparing and filing the *habeas* petition is an extraordinary circumstance which justifies the tolling of the statute of limitations. The decision of the District Court and its later affirmation by the Court of Appeals, Eleventh Circuit, that the dismissal of Schofield's petition is not appealable is thus in clear conflict with the *Calderon (supra)* decision.

IV.

THE PETITION SHOULD BE GRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THE RULING FROM THE U.S. COURT OF APPEALS, NINTH CIRCUIT, THAT A STATUTE OF LIMITATIONS MAY BE OVERCOME BY ESTOPPEL.

The *Calderon* (*supra*) decision lists three general

defenses to the filing deadlines imposed by statutory limitations. One of these, equitable tolling, was discussed in the previous argument.

A second defense to the statutes of limitations is estoppel. *Id.* at 1289. Estoppel applies to the Schofield case because the delay in filing the ***habeas*** petition was caused solely by an attorney who claimed to be a member of the bar of the U.S. Court of Appeals, Eleventh Circuit. As there was no objection raised at any time to the Schofield petition by the State of Florida, the only fault with the petition was found *sua sponte* by the District Court and, in effect, the Court of Appeals affirmed the statute of limitations bar.

Since the delay is totally due to negligence on the part of an officer of the U.S. Court of Appeals, that Court of Appeals should have been estopped to approve this defense. Such acquiescence places the entire burden of attorney negligence on Schofield, who must pay for this negligence with his entire future life.

As attorney Harrison is allegedly an officer of the U.S. Court of Appeals and subject to its supervision, the Court of Appeals, Eleventh Circuit, should be estopped to place the blame or consequence for the delayed filing on the client, Schofield, who has done nothing wrong. Thus, the decision below is in direct conflict with the Court of Appeals, Ninth Circuit, which permits estoppel as a defense to statute of limitations.

V.

THE PETITION SHOULD BE GRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THE RULING FROM THE U.S. COURT OF APPEALS, NINTH CIRCUIT, THAT A STATUTE OF

LIMITATIONS MAY BE OVERCOME BY WAIVER.

The third defense to a statute of limitations bar approved by the U.S. Court of Appeals, Ninth Circuit, in *Calderon* (*supra*) is that of waiver.

Black's Law Dictionary, Sixth Edition, defines *waiver* as follows on page 1580:

> The intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it.

According to the *Calderon* (*supra*), decision, the State of Florida waived its right to assert the statute of limitations defense because it filed no objection whatsoever to the federal *habeas* petition of Schofield. Were the Court of Appeals, Ninth Circuit, to have visited the Schofield case, its decision to permit the appeal would have been just the opposite of the decision reached in the Court of Appeals, Eleventh Circuit, to whom it made no difference that the State of Florida said nothing when it had the right to object.

VI.

THE PETITION SHOULD BE GRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THE RULING FROM THE FLORIDA SUPREME COURT THAT THE TIME LIMITS ON POST-CONVICTION PROCEEDINGS ARE TOLLED BY ATTORNEY NEGLIGENCE.

Pursuant to 28 U.S.C. § 2253 a certificate of appealability should be issued if a petitioner makes a "substantial showing" of the denial of a constitutional right. Here, Schofield has made a substantial showing that the District Court denied him the right to due process of law as guaranteed by the Fifth Amendment to the United States Constitution by failing to conduct a hearing on the allegations that the attorney he originally hired to research, prepare and timely file his petition for writ of *habeas corpus* negligently allowed the one-year limitation period to expire. Specifically, Schofield presented the District Court with competent evidence demonstrating that attorney Harrison was retained to represent him in federal *habeas* proceedings and did in fact represent him from August, 1997 through March 16, 1998.

While recognizing the novelty of the situation in light of the newly created time limit of 28 U.S.C. § 2244 (d), Schofield directed the Court's attention to the Florida Supreme Court's decision in the case of *Steele v. Kehoe*, 24 Fla. L. Weekly S237 (Fla. May 27, 1999), wherein Florida's highest Court held that "...due process entitles a prisoner to a hearing on a claim that he or she missed a deadline to file Rule 3.850 (Fla.R.Crim.P.) motion because his or her attorney agreed to file the motion but failed to do so in a timely manner." *Id.* at S239.

Schofield submits that Florida's Rule 3.850 (Fla.R.Cri,.P.) and 28 U.S.C. § 2254 are, for all intents and

purposes synonymous, particularly in light of the one-year limitation period recently placed on U.S.C. § 2254 petitions by the Anti-Terrorism and Effective Death Penalty Act (1996). Thus, if "due process" entitles remedy under these same circumstances in state court post-conviction proceedings, the same "due process" must necessarily offer a similar remedy in Federal *Habeas Corpus* proceedings where the attorney negligence is resulting in the complete loss of all federal review of a prisoner's state court conviction[2]

In this case, Schofield made a *prima facie* showing through sworn affidavits and exhibits that while he hired Harrison to research, prepare and timely file his U.S.C. § 2254 petition for writ of *habeas corpus*, attorney Harrison negligently failed to do so in a timely manner. As the Florida Supreme Court concluded, due process must afford a remedy in the form of conducting further proceedings to determine the validity of the allegation and if the interest of justice require a belated petition be permitted.

In light of the reasoning of the *Steele (supra)* Court, the facts of this case demonstrate that the District Court denied Schofield due process of law by failing to conduct a hearing to determine whether the untimeliness of his petition was the result of attorney negligence. Based on that denial of Schofield's constitutional right, both the District Court and the Circuit Court should have been issued a Certificate of Appealability to permit further judicial review of these facts. Their refusal to do so conflicts with the ruling by the Florida Supreme Court.

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[2] That remedy , according to the Florida Supreme Court is to conduct a hearing on the validity of the prisoner's allegations, and if they are established permit him or her to present a belated petition.

CONCLUSION

Leo Robert Schofield, Jr. respectfully requests that this Court grant a writ of certiorari in order to review the Order denying his application for a Certificate of Appealability by the U.S. Court of Appeals, Eleventh Circuit, and so prevent a fundamental miscarriage of justice whereby an innocent man is imprisoned for a crime that he did not commit; and, to prevent conflicts by the Court of Appeals with decisions from this Supreme Court, with decisions from the U.S. Court of Appeals, Ninth Circuit, and with a decision from the Florida Supreme Court.

Respectfully submitted,

Leo Robert Schofield, Jr.

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Pro se

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

(Filed: January 15, 1999)

Case No. 98-647-CIV-T-25A

Leo Robert Schofield, Jr.
Petitioner,

v.

Harry K. Singletary, Jr.,
et al.,
Respondent.
_____/

ORDER

On April 20, 1998, this Court ordered the petitioner to demonstrate why his case should not be dismissed as time-barred in accordance with 28 U.S.C.§ 2244(d). On May 5, 1998, the petitioner filed a response to the Court's show cause order. In his response the petitioner states that his petition is not time barred because the one year limitation period did not start to run until March 31, 1997, when the Second District Court of Appeal denied the petitioner's state petition for writ of habeas corpus. The petitioner's argument must fail.

Because the petitioner was convicted before the en- actment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) on April 24, 1996, the limitations period for the petitioner started to run on the date of AEDPA's enactment. The petitioner's limitations period was tolled until June 28, 1996, when the court of appeal affirmed the trial court's denial of the petitioner's post-conviction motion. The petitioner's second post-conviction motion did not toll the limitations period because it was not properly filed (the trial court found the motion successive and summarily denied it). Two hundred and fifty days of the limitations period went by until on March 5, 1997, the petitioner filed his state petition for writ of habeas corpus. The petition was denied on March 31, 1997, and the petitioner waited until March 30, 1998, to file his federal petition for writ of habeas corpus. The petitioner filed this petition 614 days after his limitations period started to run. Therefore, the petitioner's petition is time-barred.

An extension of time to file a habeas corpus petition is warranted only of "extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time." Calderon v. United States Dist. Court, 128 F.3d 1283, 1288 (9th Cir. 1997). The petitioner has failed to show that an extraordinary circumstance beyond his control make it impossible for him to file his writ of habeas corpus in a timely manner. Accordingly, this action is DISMISSED as time-barred. The Clerk is instructed to enter judgment against the petitioner, to terminate all pending motions in this case, and to close the file.

ORDERED in Tampa, Florida, on January 15, 1999.

/s/_____
Henry Lee Adams, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 98-647-CIV-T-25A

Leo Robert Schofield, Jr.,
Petitioner,

v.

Michael W. Moore, as
Secretary of the Florida
Department of Corrections,
et al.,
Respondent
_____/

PETITIONER'S AFFIDAVIT IN SUPPORT OF AMENDED MOTION FOR RELIEF FROM JUDGMENT

Petitioner, Leo Robert Schofield, states the following under penalties of perjury in support of his Amended Motion for relief from judgment:

1. My name is Leo Robert Schofield, Jr. and I am the petitioner in the above-styled case.

2. On **March 29, 1989,** I was wrongly convicted of first degree murder after a thirteen (13) day jury trial held in the Tenth Judicial Circuit Court, in and for Polk County, Florida.

3. In **December 1991** the Second District Court of Appeal of Florida affirmed my conviction and sentence without written opinion.

4. On **June 10, 1992**, I filed a Pro se motion for post conviction relief pursuant to Fla. R.Crim.P. 3.850 in the trial court. In my motion I submitted twelve (12) issues supporting my allegations that in violation of my constitutional rights, I was denied effective assistance of trial counsel before and during my trial.

5. On **May 19, 1993** the trial court conducted an evidentiary hearing on issues five (5) and six(6) of my motion. During the hearing, my trial attorney, Jack Edmund, candidly admitted that in his opinion his assistance was constitutionally ineffective as a result of him unintentionally allowing the prosecution to present twenty-one (21) witnesses to offer testimony depicting negative and violent character traits of mine and other prior bad acts unrelative to any material fact at issue in my trial, during the state's case-in-chief.

6. On **June 23, 1993** the trial court denied relief on issues five (5) and six (6) of my motion and scheduled a second evidentiary hearing to be held on the remaining issues.

7. On **July 14, 1994 and July 22, 1994** the trial court conducted a second evidentiary hearing on my motion to address issues one (1), three (3), four (4), seven (7), eight (8), and nine (9).

8. On **August 25, 1994** the trial court denied relief on issues one (1), three (3), four (4), seven (7), eight (8), and nine (9) on their merits, and summarily denied issues two (2), eleven (11), ten (10), and twelve (12) as being legally insufficient.

9. On **September 12, 1994** I appealed the denial of my motion for post-conviction relief to the Second District Court of Appeal of Florida.

10. On **April 12, 1996** the Second District Court of Appeal of Florida affirmed the denial of my motion without

written opinion.

11. On **May 29, 1996** the Second District Court of Appeal of Florida withdrew their April 12, 1996 opinion and entered a written opinion essentially finding my trial attorney's admission of ineffectiveness was irrelevant. The mandate was on **June 28, 1996**.

12. On **July 24, 1996** I filed a petition for discretionary review of the Second District Court of Appeal's written opinion in the Florida Supreme Court.

13. On **August 9, 1996** I filed an amended petition for discretionary review in the Florida Supreme Court.

14. On **August 20, 1996** the Attorney General's office filed a response to my Petition for discretionary review.

15. On **October 24, 1996** the Florida Supreme Court issued an order declining to accept jurisdiction.

16. On **December 11, 1996** I filed a Pro se amended motion for post conviction relief in the trial court pursuant to Fla.R.Crim.P. 3.850. In my amended motion, I presented additional facts in support of issues two (2), four (4), ten (10), eleven (11), and twelve (12) of my original motion for post-conviction relief that were summarily denied by the court as being legally insufficient. **I took this action to properly exhaust these issues, now made to be legally sufficient, in state court proceedings in good faith, and not for the purpose of delaying further state or federal reviews of my other claims**.

17. On **December 16, 1996** the trial court summarily denied my amended motion for post-conviction relief without reaching the merits of the issues presented finding it to be successive. The Court's order advised me of the right to appeal within 30 days.

18. On **December 19, 1996** I appealed the denial of my amended motion for post-conviction relief to the Second District Court of Appeal of Florida.

19. On **January 29, 1997** the Second District Court of

Appeal affirmed the denial of my amended motion for post-conviction relief without written opinion, and issued its mandate on **March 20, 1997**.

20. On **February 4, 1997** I filed a Petition for Writ of Habeas Corpus in the Second District Court of Appeal of Florida alleging the denial of effective assistance of appellate counsel during the direct appellate review of my criminal conviction.

21. On **March 31, 1997** the Second District Court of Appeal denied my petition for writ of habeas corpus without written reasons, and issued its mandate on **April 16, 1997**.

22. Following a denial of my petition for writ of habeas corpus in the state court of appeal, I believed I had properly exhausted every available state court remedy available to me and began research in preparation of filing a Title 28 U.S.C. §2254 Federal Petition for Writ of Habeas Corpus. I researched the procedure for filing such a petition using the authorities available to me through the inmate law library at the Desoto Correctional Institution where I had been incarcerated since 1991.

23. While conducting my preliminary research, an inmate law clerk told me that a one-year limitation had been created for filing a §2254 Federal Petition for Writ of Habeas Corpus, and that the one-year period begins to run from the date my state court remedies are exhausted. I requested to review the authorities detailing the provisions of the one-year limitation period so I could ensure that I comply with its specific requirements. However, after checking a number of available authorities, I was informed that the inmate law library did not yet have the updated annual cumulative supplements that would detail the one-year limitation period's procedural requirements. I inquired from the librarian when updated authorities would be available, to which I was told was unknown. Over a few months on a regular weekly basis I checked the law library for this updated and other material.

None was ever available.[1]

24. On **August 13, 1997** I contacted attorney Baya Harrison, III, by letter seeking representation in creating and filing a Title 28 U.S.C. § 2254 Federal Petition for Writ of Habeas Corpus.

25. On **August 19, 1997** attorney Harrison responded favorably to my inquiry, and notified me of his fee. (Exhibit 002).

26. On **August 27, 1997** I advised attorney Harrison by letter that his fee was acceptable and provided him with material relative to my criminal case including a detailed history of my state court collateral proceedings.

27. On **September 2, 1997**, in addition to advising me of his terms for payment, and that he wanted to have a petition filed within ninety (90) days, attorney Harrison advised me of a one-year limitation period for filing a federal habeas corpus petition, and questioned me as to what my understanding of when the time limitation began in my case. Specifically, attorney Harrison wrote:

You are, I am sure, aware of the new Federal law which sets out time limits on Federal Habeas claims. It's one year. The question is one year from what? I am sure that you feel that it's one-year from 3/31/97? Is that your understanding?
(Exhibit 003)

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[1]On April 29, 1998 I submitted a Florida Department of Corrections DC3-005 Inmate request form to librarian C. Hayes inquiring as to whether the law library had ever received any authorities that detailed the amended provisions of 28 U.S.C. § 2244 which created a one-year limitation period for filing a Federal petition for writ of habeas corpus. As demonstrated by Ms. Hayes' response, as of April 28, 1998, the law library still had no authorities detailing the one-year limitation period created in § 2244. Please see Exhibit 001, attached to Petitioner's Amended Motion for Relief from Judgment.

28. On **September 8, 1997** I wrote attorney Harrison and explained that it was my belief the one-year limitation period began in my case on March 31, 1997 when my petition for writ of habeas corpus was denied by the Second District Court of Appeal of Florida. (See Exhibit 004).[2]

29. On **September 12, 1997** attorney Harrison acknowledges receipt of my $4,000.00 partial payment, proclaimed he was "on the case" and doing some legal research. (Exhibit 005).

30. Through letters dated **October 25, 1997, November 22, 1997, December 1, 1997, December 13, 1997, December 24, 1997, January 12, 1998, and January 21, 1998** attorney Harrison assured me he was researching legal issues relative to my case and diligently creating a petition for presentation to the court. (See Exhibit 006). In none of attorney Harrison's letters to me did he ever indicate my petition had to be filed before any date other than March 31, 1998 to comply with the one-year limitation period. In fact, in attorney Harrison's **January 21, 1998** letter he expressly stated:

> **I am continuing to work very hard on your petition. Crissie called me and indicated that you were concerned. Please do not be concerned. Your petition will be filed before March 31, 1998.**

31. On **February 3, 1998** attorney Harrison mailed me his first draft of a proposed petition. (Exhibit 007).

32. On **February 11, 1998** I informed attorney Harrison of areas of his first draft which were "fundamentally wrong" and could be fatal to my case. (Exhibit 008).

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[2]During Bar complaint proceedings, attorney Harrison provided a copy of my September 8, 1997 letter which is now attached as Exhibit 004. Interestingly, on the top margin of page one, attorney Harrison hand wrote: "Make File"; "Leo Schofield"; "File Title 28 U.S.C. §2254 - deadline March 31, 1998."

33. On **February 19, 1998** attorney Harrison mailed me his second draft of a proposed petition (Exhibit 009).

34. On **March 1, 1998** I had my wife fax attorney Harrison a list of factual changes that must be made to his second draft. (Exhibit 010).

35. On **March 9, 1998** attorney Harrison mailed to me his third and proposed final draft of a proposed petition (Exhibit 011).

36. On **March 16, 1998**, based on review of attorney Harrison's third draft of a proposed petition, I was not satisfied with his representation and terminated his services. (Exhibit 012).

37. On **March 18, 1998** attorney Harrison faxed my wife a letter stating:

> **I have not heard from you re: the most recent 2254 that I sent you long ago. I cannot file it without Mr. Schofield's signature. You have said that it is due at the end of the month and I have to have time to get it signed by Bob Poli, make copies, etc. So time is absolutely of the essence. You know that full well.**

(Exhibit 013).

38. At no time during our attorney/client relationship did attorney Harrison ever tell me the one-year limitation period for filing a Federal Petition began in my case prior to March 31, 1997.

39. At all times during our attorney/client relationship attorney Harrison represented to me that I had until March 31, 1998 to timely submit a Federal Petition for Writ of Habeas Corpus.

40. Had attorney Harrison advised me that the one-year limitation period actually began in my case prior to March 31, 1997, I would have taken whatever action necessary to ensure my Federal Petition was timely filed.

41. While incarcerated at Desoto Correctional Institution, there were no authorities available to me in the inmate law library detailing the procedural provisions of the one-year limitation period created under 28 U.S.C. §2244(d). Consequently, I had no means within my control to determine when my petition would be due, and relied on attorney Harrison's agreement that I had until March 31, 1998 to file it in a timely manner.

42. At all times since my conviction was affirmed on direct appellate review, I have diligently pursued all available state court remedies to correct my wrongful conviction. I have had every intention of seeking Federal Habeas Corpus review if and when it became necessary. Further, I had every intention of complying with the one-year limitation period. However, circumstances beyond my control have made compliance with the limitation period impossible.

43. On **March 30, 1998** I signed and filed a Title 28 U.S.C. §2254 Federal Petition for Writ of Habeas Corpus in the United States District Court Middle District of Florida Tampa Division. At that time I believed my petition was timely.

44. I am innocent of the charge of First Degree Murder I have been convicted of, and have competent facts that entitle me to relief if the Court will consider the merits of my petition.

FURTHER AFFIANT SAYITH (sic) NOT

/s/_____
Leo Robert Schofield, Jr.

Verification Oath

Under penalty of perjury and by my signature I hereby verify that the aforementioned facts are true and correct to the best of

my knowledge.

/s/_____
Leo Robert Schofield, Jr.

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

(Filed: September 22, 1999)

Case No. 98-647-CIV-T-25A

Leo Robert Schofield,
Petitioner,

v.

Michael W. Moore,
Respondent.
_____/

ORDER

Before the Court are the petitioner's motion to amend (Doc. 8) and motion for leave to amend (Doc. 9). Upon consideration, the motions are **DENIED**.

ORDERED in Tampa, Florida, on September 20, 1999.

/s/_____
Henry Lee Adams, Jr.
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 98-647-CIV-T-25A

Leo Robert Schofield, Jr.
Petitioner/Appellant,

v.

Michael W. Moore, as
Secretary of the Florida
Department of Corrections,
Respondent/Appellee.
_____/

PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY

In accordance with the provisions of Fed.R.App.P 22(b), the Petitioner, Leo Robert Schofield, Jr. by and through the undersigned attorney, respectfully requests of this Honorable Court to issue a certificate of appealability in the above-styled action permitting an appeal to be taken to the United States Court of Appeals, Eleventh Circuit, on this

Court's summary dismissal of Petitioner's Title 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus, and in support thereof states the following:

1. On March 30, 1998 the Petitioner, Leo Robert Schofield, Jr., (Hereafter "Schofield"), filed a Title 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus which challenged the Constitutionality of his Florida State Court conviction for first degree murder and sentence of life imprisonment.

2. On January 15, 1999 this Court summarily dismissed Schofield's Petition without reaching its merits, by finding it to be untimely filed under 28 U.S.C. § 2244(d).

3. Schofield filed authorized post-judgment motions which included a motion to amend and/or supplement his post-judgment motions with additional facts and evidence that demonstrate why his petition should be considered on its merits despite its apparent untimeliness.

4. On September 20, 1999 this Court summarily denied Schofield's post-judgment motions, presumably on their merits.

5. Schofield has filed a timely notice of appeal, and submits a certificate of appealability should be issued by this Court because this Court's failure to conduct a hearing on Schofield's allegations that the apparent untimeliness of his petition was the result of attorney Baya Harrison's negligence is a fundamental denial of due process as contemplated under the Fifth Amendment.

6. Specifically as demonstrated in Schofield's post-judgment pleadings, between August 1997 and March 16, 1998, Schofield relied on the professional services of attorney Baya Harrison to research, prepare and timely file his Federal Petition for Writ of Habeas Corpus. However, despite attorney Harrison's uncertainty as to the accuracy of Schofield's uneducated belief that his petition would have to be filed on or before March 31, 1998, attorney Harrison was negligent and breached the reasonable duty he owed to Schofield to exercise a reasonable amount of care and due diligence by failing to research and determine exactly when Schofield's petition would have to be filed in order to comply with the provisions of 28 U.S.C. §2244(d).

7. While recognizing State Court authorities are not binding in Federal Courts, due to the uniqueness of these facts and circumstances, and the lack of existing case law with similar circumstances, Schofield directs this Court's attention to the persuasive reasoning of the Florida Supreme Court's decision in Steele v. Kehoe, 24 Fla.L. Weekly S 237 (Fla. May 17, 1999). There, Steele had hired attorney Kehoe to prepare and file a Fla.R.Crim.P. 3.850 Motion for Post-conviction relief challenging his conviction for first degree murder. However, attorney Kehoe negligently allowed the two-year limitation period for filing a rule 3.850 Motion to expire. Subsequently, Steele was time-barred from seeking post-conviction relief, and his motion was dismissed. On appeal, recognizing inherent due process implications, the District Court of Appeal certified the matter to the Florida Supreme Court. Ultimately, the Florida Supreme Court held that "due process entitles a prisoner to a hearing on a claim that he or she missed the deadline to file a rule 3.850 Motion because his or her attorney had agreed to file the motion but failed to do so in a timely manner. We hold that, if a prisoner prevails at the hearing, he or she is authorized to belatedly file a rule 3.850 Motion challenging his or her conviction or sentence." Id. At

8. The facts and circumstances of Schofield's case are identical to that in Steele, except for the fact that attorney Harrison's negligence has resulted in Schofield's Federal Petition to be dismissed as time-barred, rather than a state court post-conviction motion. Nonetheless, the due process implications are identical. Due process entitles Schofield to a hearing to determine if attorney Harrison did in fact negligently allow the one-year limitation period to expire as alleged in Schofield's post-judgment motions and the failure of this Court to conduct such a hearing is a fundamental violation of Schofield's right to due process under the Fifth Amendment of the United States Constitution.

9. Accordingly, this Court should issue a certificate of appealability in this matter, or alternatively, vacate its September 20, 1999 Order denying Schofield's post-judgment motions and conduct a hearing in this matter to determine whether Schofield's Petition for Writ of Habeas Corpus should be considered on its merits despite its apparent untimeliness.

Respectfully submitted,

/s/_____

Christopher F. Sapp, Esquire
Post Office Box 1012
Lehigh Acres, Florida 33970
(941) 368-3922
Florida Bar Number 0097823
Attorney for Petioner/Appellant

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the

foregoing has been furnished by U.S. Mail to the Honorable Michael W. Moore, Secretary, Florida Department of Corrections, 2601 Blairstone Road, Tallahassee, Florida 32399-2500, and the Honorable Bob Butterworth, Attorney General of Florida, Plaza One, The Florida Capitol Building, Tallahassee, Florida 32399-1850, this 18th day of October, 1999.

/s/_____
Christopher F. Sapp, Esq.
Attorney for Petitioner/Appellant

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

(Filed October 28, 1999)

Case No. 98-647-CIV-T-25A

Leo Robert Schofield
Petitioner,

v.

Michael W. Moore,
Respondent.
_____/

ORDER

On January 15, 1999, this Court denied the petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 19, 1999, the petitioner filed a request for a certificate of appealability (Doc. 12).

On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (the "Act") which contains amendments to 28 U.S.C. §§ 2244, 2253, 2254,2255, Appellate Rule 22, and 21 U.S.C. § 848 (q). As amended, 28 U.S.C. § 2253 provides that an appeal may not be taken from a district judge's ruling on a state prisoner's habeas corpus petition unless a "circuit justice or

judge" issues a "certificate of appealability." As amended, Rule 22 of the Federal Rules of Appellate Procedure[1] reads, in part:

(b) CERTIFICATE OF APPEALABILITY. — In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, or in a § 2255 proceeding, the applicant cannot take an appeal unless the district or a circuit judge issues a certificate of appealability pursuant to section 2253(c).

Therefore, while 28 U.S.C. § 2253 does not by its wording authorize district judges to issue certificates of appealability, Rule 22 of the Federal Rules of Appellate Procedure grants district court judges that authority.

Pursuant to U.S.C. § 2253, a certificate of appealability should issue only if the petitioner makes a "substantial showing of the denial of a constitutional right." The petitioner in this case has failed to meet the statutory test.

Accordingly, the petitioner's request for a certificate of appealability (Doc. 12) is **DENIED**.

ORDERED in Tampa, Florida, on October 27, 1999.

/s/_____
Henry Lee Adams, Jr.
UNITED STATES DISTRICT JUDGE

SA/lh

[1]Section 103 of the Act amends Rule 22.

APPENDIX F

Appeal No.: 99-14145-BB

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

LEO R. SCHOFIELD, JR.,
Appellant,

v.

MICHAEL W. MOORE,
Secretary of Florida Department of Corrections
Appellee.

FROM THE UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA,
JUDGE HENRY LEE ADAMS,
NUMBER 98-647-CIV-T-25A

APPELLANT'S APPLICATION FOR CERTIFICATE OF APPEALABILITY, OR, ALTERNATIVELY, MOTION FOR AN ORDER AUTHORIZING THE DISTRICT COURT'S CONSIDERATION OF APPELLANT'S PETITION FOR WRIT OF *HABEAS CORPUS* AS A SECOND PETITION

CHRISTOPHER F. SAPP
P. O. Box 1012
Lehigh Acres, Fl. 33970
(941) 368-3922
Florida Bar No. 0097823
Attorney for Appellant

Appellant, Leo Robert Schofield, Jr. by and through his undersigned counsel, respectfully submits for this Honorable Court's consideration the following application for Certificate of Appealability pursuant to 28 U.S.C. §2253(c) and Fed.R.App.P. 22(b)(2), or, alternatively, moves this Court pursuant to 28 U.S.C. § 2244(b)(3) and § 2244 (b)(4) for an order authorizing the District Court's consideration of Schofield's petition for writ of *habeas corpus* as a second petition, and in support thereof states:

I
APPLICATION FOR CERTIFICATE OF APPEALABILITY

On January 15, 1999, the Honorable Henry Lee Adams, District Court Judge, United States District Court of Florida, Middle District, Tampa Division, dismissed as time-barred Schofield's 28 U.S.C. § 2254 Federal Petition for Writ of *Habeas Corpus*. Schofield submitted post-judgment motions as well as a motion for certificate of appealability which were summarily denied.

Schofield submits that a Certificate of Appealability should be issued because he has made a substantial showing of denial of due process as a result of the District Court's failure to conduct a hearing on Schofield's claim that attorney Baya Harrison's negligence made it impossible to timely submit his petition for writ of *habeas corpus*.

While recognizing that state court decisions are not binding in this Court, Schofield respectfully directs this Court's attention to the Florida Supreme Court's decision in *Steele v. Kehoe*, 24 Fla. L. Weekly S237 (Fla.May 27, 1999), wherein Florida's highest court held that:

> ...due process [as contemplated under the Fifth Amendment] entitles a prisoner to a hearing on a claim that he or she missed a deadline to file a Rule 3.850 motion because his or her attorney had agreed to file the motion but failed to do so in a timely manner. *Id.* At S238.

Schofield submits that Florida's Rule 3.850 of Criminal Procedure and 28 U.S. C. § 2254 are for all intents and purposes synonymous, particularly in light of the one year limitation period recently created under the anti-Terrorism and Effective Death Penalty Act (1996). Thus, logical reasoning suggests that if "due process" entitles a prisoner to such a remedy under these circumstances in Rule 3.850 proceedings, the same due process would also entitle a prisoner to the same remedy under these circumstances in § 2254 proceedings and the failure to afford such a remedy would violate Schofield's right to due process.

In this case, Schofield has clearly made a *prima facie* showing through sworn affidavit and exhibits that he in fact hired attorney Harrison to research, prepare and file Schofield's § 2254 petition for writ of *habeas corpus*, but that attorney Harrison negligently failed to do so in a timely manner. As the Florida Supreme Court concluded in *Steele v. Kehoe*, "due process" must afford a remedy in these circumstances. If Schofield's allegation is true, then due process mandates that the merits of his petition be considered.

Accordingly, Schofield requests this Court issue a Certificate of Appealability as he has been denied "due process" by the District Court's failure to determine whether attorney Harrison's negligence made it impossible to timely file his petition, and if so, consider the merits of Schofield's petition.

II

MOTION FOR AN ORDER AUTHORIZING THE DISTRICT COURT TO CONSIDER APPELLANT'S PETITION FOR WRIT OF *HABEAS CORPUS* AS A SECOND PETITION

Schofield respectfully moves this Court for an order authorizing the District Court's consideration of his petition for writ of *habeas corpus* as a second petition. Schofield

submits that, as outlined above and fully set forth in his post-judgment motions, he has been precluded from receiving federal *habeas* review of his unlawful conviction because of attorney Harrison's negligent handling of the legal matters entrusted to him. Schofield has consistently and diligently prosecuted his post-conviction remedies since he was originally convicted in 1988. Schofield has always intended on seeking federal *habeas* review in the event it would become necessary and in fact hire attorney Harrison to perfect the research, preparation and filing of a Federal Petition for Writ of *Habeas Corpus*. However, unbeknownst to Schofield, attorney Harrison negligently allowed the one-year limitation period of 28 U.S.C. §2244(d) to expire, thus precluding Schofield from otherwise obtaining federal *habeas* review of his unlawful conviction.

Schofield humbly requests that this Court authorize the consideration of his petition for writ of *habeas corpus* in the interest of justice: From the beginning, Leo R. Schofield, Jr. has consistently told everyone "I didn't do it". Justice has not been met in this case, and unless federal *habeas* review is afforded, it never will.

Accordingly, Schofield moves this Court for an order authorizing the District Court's consideration of his Petition for Writ of *Habeas Corpus* as a second petition.

Respectfully submitted,

/s/_____

Christopher F. Sapp
P. O. Box 1012
Lehigh Acres, Fl. 33970
(941) 368-3922
Florida Bar No. 0097823
Attorney For Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Honorable Michael W. Moore, Secretary, Florida Department of Corrections, 2601 Blairstone Road, Tallahassee, Florida 32399-1850, this 20th day of December, 1999.

/s/_____
Attorney

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(Filed: January 28, 2000)

No. 99-14145-B

Leo Robert Schofield, Jr.,
Petitioner/Appellant,

v.

Michael W. Moore, Secretary of the Florida Department of Corrections, Robert A. Butterworth, Attorney General of the State of Florida,
Respondents/Appellees.

/

Appeal from the United States District Court for the Middle District of Florida

ORDER

Appellant's motion for a certificate of appealability or, alternatively, "An order authorizing the district court's consideration of appellant's petition for writ of habeas corpus as a second petition," is DENIED for failure to make a

substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

/s/ Gerald Bard Tjoflat
UNITED STATES CIRCUIT JUDGE

APPENDIX H

28 U.S.C. §2244(d)(1) - A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.

28 U.S.C. § 2253(c)(2) - A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

Fifth Amendment - [N]or be deprived of life, liberty, or property, without due process of law.

Sixth Amendment - In all criminal prosecutions, the accused shall enjoy the right. . . to have the Assistance of Counsel for his defense.

Fourteenth Amendment - [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.